

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 573 – SB 682

March 21, 2017

SUMMARY OF ORIGINAL BILL: Prohibits judicial diversion for individuals charged with aggravated burglary.

CORRECTED FISCAL IMPACT OF ORIGINAL BILL:

Decrease State Revenue – \$14,700/TBI

Increase State Expenditures – \$656,900/Incarceration*

SUMMARY OF AMENDMENT (005214): Deletes and rewrites the proposed legislation to clarify that a defendant convicted of aggravated burglary, in cases where the habitation was abandoned or vacant for 30 days or more at the time of the offense, is not disqualified from being granted judicial diversion.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Decrease State Revenue – \$14,700/TBI

Increase State Expenditures – \$328,500/Incarceration*

Assumptions for the bill as amended:

- Tennessee Code Annotated § 40-35-313 authorizes judicial diversion for certain “qualified defendants”. Currently, someone charged with aggravated burglary could be eligible for judicial diversion.
- A defendant granted judicial diversion enters a guilty plea, but that plea is suspended. The defendant is placed under a period of supervision during which the defendant must complete certain conditions. Upon completion, the plea is never entered. Therefore, one who successfully completes a diversion program for aggravated burglary will not have a felony conviction on his or her record.
- The proposed legislation would prohibit anyone charged with aggravated burglary from being eligible for judicial diversion, but a person who pleads guilty or is convicted of aggravated burglary may still qualify for probation.

- The Department of Correction (DOC) reports an average of 28 felons each year violate the terms of their judicial diversion for aggravated burglary.
- A 2009 study by the National Association of Pretrial Services Agencies indicates a median success rate of 85 percent. Most diversion programs reported a success rate of 70 percent or better.
- Tennessee provides both pretrial diversion and judicial diversion. Judicial diversion is generally considered the tougher diversion program.
- It is assumed that Tennesseans enrolled in judicial diversion programs achieve a success rate of 60 percent.
- Assuming a success rate of 60 percent, the average number of felons enrolled in judicial diversion programs each year for aggravated burglary is 70 ($28 / 0.4 = 70$).
- The proposed legislation will result in these defendants, except those who burgle a habitation that was abandoned or vacant for 30 days or more at the time the offense is committed, being denied judicial diversion and either pleading guilty or being convicted at trial of aggravated burglary.
- Aggravated burglary is a class C felony, for which the maximum sentence under range I or II is 10 years. Those pleading guilty or being convicted at trial will be eligible for probation.
- If a defendant violates the conditions of probation, the court can (1) order incarceration, (2) cause execution of the judgment as it was originally entered, or (3) extend the remaining probationary period for a period not to exceed two years.
- The proposed legislation will result in some serving time in prison that would not if judicial diversion was available, because those that violate judicial diversion under current law will likely violate probation under the proposed legislation.
- It is assumed that four defendants will violate probation and serve the original prison sentence.
- Statistics from the DOC show the average time served for aggravated burglary over the last 10 years is 3.27 years (1,194.37 days).
- According to the DOC, the average operating cost per offender per day for calendar year 2017 is \$68.75.
- Population growth will not impact these admissions.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on four offenders serving 3.27 years (1,194.37 days) for a total of \$82,113 ($\$68.75 \times 1,194.37$ days). The cost for four offenders is \$328,452 ($\$82,113 \times 4$).
- It is assumed that any impact on the caseloads of the district attorneys, the public defenders, or the courts can be accommodated within existing resources without an increased appropriation or reduced reversion.
- The Tennessee Bureau of Investigation (TBI) receives \$350 for expungements completed from the successful completion of a diversion program. The proposed legislation will reduce the number of expungements processed by TBI.
- It is assumed that 42 defendants (70 total diversions – 28 violating under current law) each year successfully complete diversion and expunge their records.
- The proposed legislation will result in a recurring decrease in state revenue to TBI of \$14,700 ($\350×42).

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

/trm